

<p>1 Dawley 201</p> <p>2 <b>Shron.</b></p> <p>3 <b>Q</b> Did they suggest to you that this</p> <p>4 journal entry and adjustments be accepted by Dalton?</p> <p>5 <b>A</b> <b>What do you mean suggest?</b></p> <p>6 <b>Q</b> Well, they were the auditors,</p> <p>7 right?</p> <p>8 <b>A</b> <b>That's correct.</b></p> <p>9 <b>Q</b> They looked at your general ledger</p> <p>10 report of \$108,000.00 for 2006, is that</p> <p>11 correct?</p> <p>12 <b>A</b> <b>Yes.</b></p> <p>13 <b>Q</b> Is it fair to say then that they</p> <p>14 suggested to you that the \$108,000.00 be</p> <p>15 reclassified as to \$82,000.00 and that the</p> <p>16 report to DHCR show \$34,000.00?</p> <p>17 <b>MR. TRAUB:</b> Objection to</p> <p>18 form.</p> <p>19 <b>A</b> <b>The \$34,000.00 was the retainer</b></p> <p>20 <b>that we paid out for the audit. The other</b></p> <p>21 <b>items were not for the audit and shouldn't</b></p> <p>22 <b>have -- should not appear under audit</b></p> <p>23 <b>expenses. They should appear under the proper</b></p> <p>24 <b>classification. They were for taxes and a</b></p> <p>25 <b>LEX REPORTING SERVICE</b> 800-608-6085</p>	<p>1 Dawley 203</p> <p>2 <b>as to what period in time those amounts were</b></p> <p>3 <b>generated for.</b></p> <p>4 <b>Q</b> Is it fair to say that if someone</p> <p>5 at DHCR, had received that document reporting</p> <p>6 the \$34,000.00 that they might conclude that</p> <p>7 the only monies received by Marks, Paneth &amp;</p> <p>8 Shron in 2006 was \$34,000.00?</p> <p>9 <b>MR. TRAUB:</b> Objection to the</p> <p>10 form.</p> <p>11 <b>MR. KELLY:</b> Objection to the</p> <p>12 form.</p> <p>13 <b>A</b> <b>If you recall our representative</b></p> <p>14 <b>for DHCR comes in a couple of times a year to</b></p> <p>15 <b>review our financial information and looks at</b></p> <p>16 <b>every check we generate. So they were well</b></p> <p>17 <b>aware of how many checks we wrote and the</b></p> <p>18 <b>amount that we wrote for Marks, Paneth &amp;</b></p> <p>19 <b>Shron. When they also come in they will ask</b></p> <p>20 <b>us for a copy of our expenditures for a period</b></p> <p>21 <b>in time, say the first six months of the year.</b></p> <p>22 <b>We would generate the activity for those six</b></p> <p>23 <b>months, which would show every category and</b></p> <p>24 <b>expense for that six months. The form that</b></p> <p>25 <b>they would have gotten would have been on a</b> <b>LEX REPORTING SERVICE</b> 800-608-6085</p>
<p>1 Dawley 202</p> <p>2 <b>couple of various. I would have to look and</b></p> <p>3 <b>see, but I would presume they were possibly</b></p> <p>4 <b>for a rent increase that we had.</b></p> <p>5 <b>Q</b> They were for accrued monies,</p> <p>6 which had accumulated over several years,</p> <p>7 isn't it correct the \$82,000.00?</p> <p>8 <b>MR. TRAUB:</b> Objection to</p> <p>9 form.</p> <p>10 <b>Q</b> That wasn't money from one year</p> <p>11 that was accrued going backwards, I think you</p> <p>12 testified to 2001, is that correct?</p> <p>13 <b>MR. TRAUB:</b> Objection to</p> <p>14 form.</p> <p>15 <b>MR. KELLY:</b> Joined.</p> <p>16 <b>A</b> <b>That's not what I said.</b></p> <p>17 <b>Q</b> Tell us please what you said.</p> <p>18 <b>A</b> <b>I read off the description of the</b></p> <p>19 <b>work that was done for prior years that was</b></p> <p>20 <b>paid in the year 2006. If we had monies</b></p> <p>21 <b>available we would have paid it currently. We</b></p> <p>22 <b>wouldn't have accrued it for four or five</b></p> <p>23 <b>years if we had funds available. I'd have to</b></p> <p>24 <b>look at the invoices to see exactly what dates</b></p> <p>25 <b>they were dated in order to give you an answer</b> <b>LEX REPORTING SERVICE</b> 800-608-6085</p>	<p>1 Dawley 204</p> <p>2 <b>cash basis and would have shown for the first</b></p> <p>3 <b>six months how much we paid Marks, Paneth &amp;</b></p> <p>4 <b>Shron without reclassification.</b></p> <p>5 <b>Q</b> Mr. Dawley, whenever there is a</p> <p>6 lot of accrued expense on any accounting going</p> <p>7 back several years, if you were auditing would</p> <p>8 that suggest to you the possibility that some</p> <p>9 of the sums accrued would need to be strongly</p> <p>10 verified before they were credited at face</p> <p>11 value?</p> <p>12 <b>MR. KELLY:</b> Objection to</p> <p>13 form.</p> <p>14 <b>A</b> <b>If you'll note that the journal</b></p> <p>15 <b>entry that was made for the \$82,000.00 was</b></p> <p>16 <b>reclassified not from a payable from prior</b></p> <p>17 <b>years. It was reclassified as an expense of</b></p> <p>18 <b>the current year. That would indicate that it</b></p> <p>19 <b>was an expense of that year, not prior years.</b></p> <p>20 <b>Q</b> Wouldn't that tend to reduce</p> <p>21 income to the partnership in 2006 if that</p> <p>22 reclassification was made and the deduction</p> <p>23 was taken all in one year? Under the accrual</p> <p>24 system it was probably deducted as an account</p> <p>25 payable in the previous year. I mean wouldn't <b>LEX REPORTING SERVICE</b> 800-608-6085</p>

1 Dawley 205  
2 there be some confusion there?  
3 MR. KELLY: Objection to  
4 form.  
5 MR. TRAUB: Objection to  
6 form.  
7 **A No, no.**  
8 **If the amount was due to a prior**  
9 **year it would have been accrued and expensed**  
10 **in the prior year.**  
11 **Q** Now, shouldn't this schedule  
12 report actual fees paid to Marks, Paneth &  
13 Shron and anybody else in that year in the  
14 given year, shouldn't the schedule show that?  
15 **A Not that I am aware of.**  
16 **Q** So the answer is no?  
17 **A No.**  
18 **Q** Whose responsibility is it  
19 eventually to do the financial statements?  
20 Whose responsibility is that; is that the  
21 auditor's responsibility or --  
22 **A The auditors.**  
23 MR. TRAUB: Objection to the  
24 form.  
25 MR. KELLY: Joined.  
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1 Dawley 206  
2 **A The auditors prepare the financial**  
3 **statement based on the DHCR financial**  
4 **statement classification and form. The forms**  
5 **are specified by DHCR. They not something**  
6 **that the accounting firm, you know, decides**  
7 **what they want to do or Gapp or anything else.**  
8 **It's done according to DHCR rules. They**  
9 **provide the outline. They provide the forms**  
10 **that have to be prepared and that's what was**  
11 **prepared.**  
12 **Q** DHCR tells you how to fill out  
13 those forms?  
14 **A DHCR has instructions as to what**  
15 **has to go on each form.**  
16 **Q** DHCR indicates that only the  
17 \$34,000.00, should be reported on the  
18 financial statement when \$108,000.00 was  
19 actually received?  
20 MR. KELLY: Objection to  
21 form.  
22 MR. TRAUB: Objection to  
23 form.  
24 **A We would have to look at the**  
25 **specific instructions that DHCR provides along**  
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1 Dawley 207  
2 **with the form, in order to determine how we**  
3 **have to classify our item, because they are**  
4 **very specific.**  
5 **Q** There is no question that the  
6 \$82,000.00 that is on that Exhibit is  
7 generated at least in part from invoice number  
8 103442, which bears the date August 28th of  
9 2002?  
10 **A Where is the Exhibit?**  
11 **Q** I am going to show you the bill.  
12 I am not going to mark it at this point if you  
13 agree that that money is coming from 2002.  
14 MR. TRAUB: Objection to the  
15 form.  
16 MR. KELLY: Joined.  
17 MR. TRAUB: I think we  
18 should mark this as an Exhibit.  
19 **Q** Let's get the witness's answer to  
20 the question?  
21 MR. TRAUB: Let's mark it as  
22 an Exhibit first.  
23 (Invoice number 103442 was  
24 marked as Plaintiff's  
25 Exhibit 12, for  
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1 Dawley 208  
2 identification, as of this  
3 date.)  
4 **A What this shows is that there was**  
5 **a payment made of \$125,000.00 in the year 2006**  
6 **and I don't see any of our Dalton codes that**  
7 **would show that this was in fact paid, 'cause**  
8 **usually there is a code on the invoice that**  
9 **would correspond to the code of 103442. I**  
10 **question that so I couldn't tell you it's the**  
11 **same amount.**  
12 MR. HAYWOODE: I am going to  
13 ask that we mark this as  
14 Plaintiff's Exhibit 13.  
15 (A document showing a check  
16 being paid for \$15,000.00  
17 was marked as Plaintiff's  
18 Exhibit 13, for  
19 identification, as of this  
20 date.)  
21 **Q** My question will be does that  
22 inform your opinion?  
23 **A No.**  
24 **No, all this says is that we paid**  
25 **a check for \$15,000.00 invoice 103442.**  
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<p>1 Dawley 209</p> <p>2 <b>Usually I see -- even though it corresponds I</b></p> <p>3 <b>usually get an item, but it appears to be the</b></p> <p>4 <b>same amount. The question that I also noticed</b></p> <p>5 <b>was there seems to be some other adjustments,</b></p> <p>6 <b>which we are not seeing, because when I take</b></p> <p>7 <b>\$108,000.00 and take away 83 from that I only</b></p> <p>8 <b>come up with 25 and the audit fee that's shown</b></p> <p>9 <b>is 34, so there is another adjustment that we</b></p> <p>10 <b>are not seeing.</b></p> <p>11 <b>Q</b> I ask again whose responsibility</p> <p>12 is the financial statement, is it the</p> <p>13 responsibility of Dalton or the responsibility</p> <p>14 of Marks, Paneth &amp; Shron?</p> <p>15 MR. TRAUB: Objection to</p> <p>16 form.</p> <p>17 MR. KELLY: Objection to</p> <p>18 form.</p> <p>19 <b>A Dalton Management produces the --</b></p> <p>20 <b>produces the information, gives it to Marks,</b></p> <p>21 <b>Paneth &amp; Shron. They convert it to accrual</b></p> <p>22 <b>and produce the financial statement.</b></p> <p>23 <b>Q</b> But who has the responsibility,</p> <p>24 sir, in your opinion for the financial</p> <p>25 statement?</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 211</p> <p>2 whose responsibility it is? I am just showing</p> <p>3 the item to you, it's not marked at this time,</p> <p>4 to insure what's in the financial statement.</p> <p>5 MR. TRAUB: Objection to</p> <p>6 form.</p> <p>7 MR. KELLY: Objection to</p> <p>8 form.</p> <p>9 <b>Q</b> Would that change your opinion as</p> <p>10 to whose responsibility it is?</p> <p>11 MR. KELLY: Objection to</p> <p>12 form.</p> <p>13 MR. TRAUB: Objection to</p> <p>14 form.</p> <p>15 I think you have two</p> <p>16 different questions that you</p> <p>17 asked.</p> <p>18 Do you want to stick with</p> <p>19 your last one?</p> <p>20 <b>Q</b> If the witness understands let him</p> <p>21 answer.</p> <p>22 MR. TRAUB: I want to make</p> <p>23 sure that he's answering the</p> <p>24 question. You asked two in a</p> <p>25 row.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 210</p> <p>2 MR. TRAUB: Objection to</p> <p>3 form.</p> <p>4 MR. KELLY: Objection to</p> <p>5 form.</p> <p>6 <b>Q</b> Between the two?</p> <p>7 <b>A The financial statement is</b></p> <p>8 <b>produced by Marks, Paneth &amp; Shron in their</b></p> <p>9 <b>audit procedures and submitted to us and then</b></p> <p>10 <b>distributed.</b></p> <p>11 <b>Q</b> I am going to show you a document,</p> <p>12 an independent auditors report for Marks,</p> <p>13 Paneth &amp; Shron to Fifth and 106th Street</p> <p>14 Corporation and read you from the first</p> <p>15 paragraph?</p> <p>16 The comments, these financial</p> <p>17 statements are the responsibilities of the</p> <p>18 partnership management. Our responsibility is</p> <p>19 to express an opinion on these financial</p> <p>20 statements based on our audits?</p> <p>21 Have you read that representation</p> <p>22 in the independent auditor's report by Marks,</p> <p>23 Paneth &amp; Shron?</p> <p>24 <b>A No.</b></p> <p>25 <b>Q</b> Would it change your opinion as to</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 212</p> <p>2 MR. HAYWOODE: Let him</p> <p>3 explain if he doesn't understand</p> <p>4 it.</p> <p>5 <b>A The financial statement is audited</b></p> <p>6 <b>by Marks, Paneth &amp; Shron. They then produce</b></p> <p>7 <b>the financial statement in the form required</b></p> <p>8 <b>by the various agencies. Dalton provided them</b></p> <p>9 <b>with the information to produce that, which we</b></p> <p>10 <b>do.</b></p> <p>11 <b>Q</b> Did you ever tell Marks, Paneth &amp;</p> <p>12 Shron, "Okay, I agree with your</p> <p>13 characterization, with your adjustments to</p> <p>14 change the \$180,000 we put in the general</p> <p>15 ledger to \$34,000.00 and send it to DHCR?"</p> <p>16 Did you ever sign off or to consent to that in</p> <p>17 writing or orally or in any other way.</p> <p>18 MR. KELLY: Objection to</p> <p>19 form.</p> <p>20 MR. TRAUB: Objection to</p> <p>21 form.</p> <p>22 <b>Q</b> Did you ever consent to that?</p> <p>23 <b>A Not that I recall.</b></p> <p>24 <b>Q</b> Were you ever asked to consent to</p> <p>25 that?</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

1	Dawley	213	1	Dawley	215
2	<b>A I don't remember if I was</b>		2	no.	
3	<b>specifically on that item.</b>		3	MR. HAYWOODE: Ms.	
4	<b>Q</b> Were you asked to consent to any		4	Torregrossa is not going to	
5	of these journal adjustments that were coming		5	record my answer she is going to	
6	from Marks, Paneth & Shron in great numbers		6	record his answer.	
7	and great volumes?		7	MR. TRAUB: You don't need	
8	MR. TRAUB: Objection to		8	to clarify his answer.	
9	form.		9	Maybe we should take a break	
10	MR. KELLY: Objection to		10	at this point. Let's take a	
11	form.		11	quick break.	
12	<b>A The reclassifications that they</b>		12	(Whereupon, a recess was	
13	<b>made were acceptable to us and were booked by</b>		13	taken at this time.)	
14	<b>us.</b>		14	(A 2006 financial statement	
15	<b>Q</b> Where you said you didn't put them		15	was marked as Plaintiff's	
16	in your he general ledger?		16	Exhibit 14, for	
17	MR. KELLY: Objection to		17	identification, as of this	
18	form.		18	date.)	
19	MR. TRAUB: Objection to		19	<b>Q</b> Exhibit 14 is?	
20	form.		20	<b>A 2006 financial statement.</b>	
21	<b>A That is not what I said.</b>		21	MR. KELLY: For what entity?	
22	<b>I said we booked the required</b>		22	THE WITNESS: Fifth and	
23	<b>adjustments that I needed to make to put my</b>		23	106th Street Associates.	
24	<b>books in agreement, my balance sheet items in</b>		24	MR. TRAUB: You had asked	
25	<b>agreement with what they had in their audit,</b>		25	the question about that letter	
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	800-608-6085			800-608-6085	
1	Dawley	214	1	Dawley	216
2	<b>in their final audit.</b>		2	and then we said we would mark it	
3	<b>Q</b> Do you have any piece of paper or		3	over the break.	
4	communication or back and forth between you		4	MR. HAYWOODE: And this was	
5	and Marks, Paneth & Shron, to show that as an		5	the statement.	
6	auditor that they suggested these changes to		6	MR. TRAUB: About	
7	Dalton and that Dalton accepted them?		7	responsibilities.	
8	MR. TRAUB: Objection to the		8	MR. HAYWOODE: About	
9	form.		9	responsibilities of management	
10	MR. KELLY: Join.		10	okay.	
11	<b>Q</b> Do you have any type of paper		11	<b>Q</b> This \$15,000.00 that came from	
12	trail or any other record to show that they		12	2001, the deduction was taken in 2006, is that	
13	were suggesting it to you and you were		13	correct?	
14	acquiescing to it?		14	MR. TRAUB: Objection to	
15	MR. KELLY: Objection to		15	form.	
16	form.		16	MR. KELLY: Objection to	
17	<b>A Not that I recall.</b>		17	form.	
18	MR. TRAUB: And in point of		18	<b>A Well, I just glanced through and</b>	
19	fact --		19	<b>we are going to have to look at the final</b>	
20	MR. HAYWOODE: Break, break.		20	<b>trial balance and all the adjustments in order</b>	
21	Are you testifying now for		21	<b>to make that determination, because when you</b>	
22	him? He said he doesn't recall.		22	<b>take 108 less the 83 you come up with about</b>	
23	Don't put words in his mouth?		23	<b>\$23,000.00 or \$24,000.00 of audit fees in</b>	
24	MR. TRAUB: The answer was I		24	<b>accounting. Yet there is \$34,000.00 in the</b>	
25	don't recall. Your answer was		25	<b>financial statement, which is a \$10,000.00</b>	
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<p>1 Dawley 217</p> <p>2 difference. If you also look under management</p> <p>3 consulting \$82,900.00, the financials come up</p> <p>4 to about \$59,000.00, so there has got to be</p> <p>5 another adjustment to that amount as well, so</p> <p>6 I really can't answer that question.</p> <p>7 Q Is there a reason why the 2001</p> <p>8 expense wouldn't have been accrued?</p> <p>9 A That's what I am telling you.</p> <p>10 MR. KELLY: Objection to</p> <p>11 form.</p> <p>12 A I can't make that determination</p> <p>13 without seeing the rest of the adjustments. I</p> <p>14 have to look at all adjustments to all of</p> <p>15 those accounts in order to make the</p> <p>16 determination as to whether it was expensed in</p> <p>17 this year or it was previously expensed and</p> <p>18 not paid for until now, which includes</p> <p>19 accounts payable.</p> <p>20 Q But if your financial statements</p> <p>21 are on an accrual basis, then it would be</p> <p>22 reasonable to expect that that expense would</p> <p>23 have been accrued, would it not?</p> <p>24 MR. TRAUB: Objection to</p> <p>25 form.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 219</p> <p>2 MR. KELLY: And I am</p> <p>3 objecting to it.</p> <p>4 Q Looking at the journal entries</p> <p>5 none of them say anything about accrual, do</p> <p>6 they?</p> <p>7 A If you look at the financial, the</p> <p>8 trial balance as adjusted for management</p> <p>9 consultant fees.</p> <p>10 Q State the page number for the</p> <p>11 record.</p> <p>12 A Page number it's three of five the</p> <p>13 management consultant fees on the unadjusted,</p> <p>14 means the amount we had under consultant</p> <p>15 \$23,899.00 to that figure there was several</p> <p>16 adjustments. Adjustment number 8, adjustment</p> <p>17 number 23 -- adjustment number 23 and number</p> <p>18 25, which changed the balance from \$23,899.00</p> <p>19 to \$59,977.00. Part of the \$32,999 was taken</p> <p>20 out. Somehow I'd have to look back and</p> <p>21 examine all the journal entries, as well as</p> <p>22 accounts payable, which we don't have all that</p> <p>23 information here to come up with the amount</p> <p>24 whether or not that \$15,000.00 was indeed</p> <p>25 expensed in the year 2006.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 218</p> <p>2 MR. KELLY: Objection to</p> <p>3 form.</p> <p>4 A That expense could very well have</p> <p>5 been expensed and accrued in the year</p> <p>6 2002/2003.</p> <p>7 Q Then deducted again in 2006?</p> <p>8 MR. KELLY: Objection to</p> <p>9 form.</p> <p>10 A That is what I am telling you is</p> <p>11 that we can't determine from the information</p> <p>12 you provided.</p> <p>13 MR. HAYWOODE:</p> <p>14 Unfortunately, we don't provide</p> <p>15 the information.</p> <p>16 May I ask that if your</p> <p>17 counsel feels that it desirable</p> <p>18 that you look into this and see</p> <p>19 if we can get some answer as to</p> <p>20 whether it was in fact accrued in</p> <p>21 2001 and then billed in total</p> <p>22 again in 2006. I would ask that</p> <p>23 you make that inquiry.</p> <p>24 MR. TRAUB: We will take it</p> <p>25 under advisement.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 220</p> <p>2 Q Are those accrual adjustments?</p> <p>3 A Those are all accrual adjustments.</p> <p>4 Q Now, looking at Plaintiff's 12</p> <p>5 again, there is a bill that was paid in 2006.</p> <p>6 I am looking at the series of charges.</p> <p>7 1/25/2000 and special project, 11/6/2000</p> <p>8 audit, 1/17/2000 work paper review, field</p> <p>9 work, field work, work paper, work paper, work</p> <p>10 paper, work paper, field work, work paper and</p> <p>11 audit planning.</p> <p>12 Is there any way that in 2006 when</p> <p>13 this these charges, which are Plaintiff's 12</p> <p>14 of February 24th, were presented? Is there</p> <p>15 any way that anybody could determine the bona</p> <p>16 fides of such claims?</p> <p>17 MR. TRAUB: Objection to</p> <p>18 form.</p> <p>19 MR. KELLY: Objection to</p> <p>20 form</p> <p>21 A What do you mean, I don't</p> <p>22 understand?</p> <p>23 Q I mean if I showed up at Dalton</p> <p>24 tomorrow and said back in 1999 and '98 and '97</p> <p>25 I have billings, as I well might, that are not</p> <p>LEX REPORTING SERVICE 800-608-6085</p>



<p>1 Dawley 221</p> <p>2 addressed and I gave categorizations like that</p> <p>3 would there be any way that anyone could tell</p> <p>4 six, seven, eight years later that anyone</p> <p>5 could make a judgment as to is this real or</p> <p>6 what?</p> <p>7 MR. TRAUB: Objection to</p> <p>8 form.</p> <p>9 MR. KELLY: Objection to</p> <p>10 form.</p> <p>11 <b>A This is a bill that's usually done</b></p> <p>12 <b>by professionals that have a list of</b></p> <p>13 <b>categories of what they do. You don't put</b></p> <p>14 <b>down 50,000 categories, because it's too hard</b></p> <p>15 <b>to work with, so you try to pare it down to</b></p> <p>16 <b>the major things you do and you come up with a</b></p> <p>17 <b>few -- a lot fewer categories and you make</b></p> <p>18 <b>your work and you charge them under one of</b></p> <p>19 <b>those categories. That is what they are doing</b></p> <p>20 <b>here. I am assuming that, but I know how</b></p> <p>21 <b>accounting is billed and I am sure Cameron and</b></p> <p>22 <b>his crew do the same thing. They don't put</b></p> <p>23 <b>down the dissertation of every half hour.</b></p> <p>24 <b>They put down as to exactly what they did</b></p> <p>25 <b>reconcile journal number 17 on the client's</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 223</p> <p>2 billing invoice was marked</p> <p>3 as Plaintiff's Exhibits 15</p> <p>4 and 16, for identification,</p> <p>5 as of this date.)</p> <p>6 <b>Q</b> Sir, I just want to go back with</p> <p>7 regard to the last question.</p> <p>8 Shouldn't you have known that this</p> <p>9 amount was not accrued?</p> <p>10 MR. TRAUB: Objection.</p> <p>11 MR. KELLY: Objection to</p> <p>12 form.</p> <p>13 <b>A I don't remember every account</b></p> <p>14 <b>that was accrued for ten companies that</b></p> <p>15 <b>includes thousands in transactions a year.</b></p> <p>16 <b>I'm not going to remember that.</b></p> <p>17 MR. HAYWOODE: Let's start</p> <p>18 with 7. That's 15. It refers to</p> <p>19 a mortgage closing consultation</p> <p>20 and professional fees, which</p> <p>21 would be item 3 and item 8 there</p> <p>22 and payable in 2006 and I am</p> <p>23 going to admit another document</p> <p>24 as Plaintiff's Exhibit 17.</p> <p>25 (A Gray Stone Fannie May LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 222</p> <p>2 <b>books. It's not going to happen they take</b></p> <p>3 <b>more time in doing their billing then they</b></p> <p>4 <b>ever get done. You have to look at the</b></p> <p>5 <b>billing of a lot more than \$15,000, which</b></p> <p>6 <b>indicates a lot was already paid in prior</b></p> <p>7 <b>years, so this Exhibit 12 is not just for</b></p> <p>8 <b>\$15,000.00 it's for more than that. So you'd</b></p> <p>9 <b>have to look at what their categories mean and</b></p> <p>10 <b>you would be able to go ahead. I'm sure</b></p> <p>11 <b>Marks, Paneth &amp; Shron has got some category</b></p> <p>12 <b>description of what they like to have and what</b></p> <p>13 <b>they like to charge it under and go from</b></p> <p>14 <b>there. I don't know it for a fact, but that's</b></p> <p>15 <b>usually the way accountants do their billing.</b></p> <p>16 <b>Q</b> But the balance was not accrued?</p> <p>17 MR. TRAUB: Objection to the</p> <p>18 form.</p> <p>19 MR. KELLY: Join.</p> <p>20 <b>A I don't know that.</b></p> <p>21 MR. HAYWOODE: I am going to</p> <p>22 ask Ms. Torregrossa to mark</p> <p>23 former Exhibits 7 and 8 as</p> <p>24 Plaintiff's Exhibits 15 and 16.</p> <p>25 (A mortgage closing and a LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 224</p> <p>2 settlement was marked as</p> <p>3 Plaintiff's Exhibit 17, for</p> <p>4 identification, as of this</p> <p>5 date.)</p> <p>6 <b>Q</b> That document 15 and that</p> <p>7 accounting and 16 that billing, what is the</p> <p>8 date on it?</p> <p>9 <b>A June the 9, 2005.</b></p> <p>10 <b>Q</b> June 9, 2005 appears to assert a</p> <p>11 bill for \$23,000.00 reduced by \$1,000.00 to</p> <p>12 \$22,000.00 pertaining to a closing, which took</p> <p>13 place March 30, of 2004.</p> <p>14 <b>A Okay.</b></p> <p>15 MR. TRAUB: Objection to</p> <p>16 form.</p> <p>17 <b>Q</b> Can you tell from those Exhibits</p> <p>18 what the \$22,000.00 was paid for?</p> <p>19 <b>A First of all, I was not included</b></p> <p>20 <b>or did I attend the refinancing.</b></p> <p>21</p> <p>22 <b>Q</b> Go ahead.</p> <p>23 <b>A Number 2, the billing I don't</b></p> <p>24 <b>remember any of these -- seeing any of the</b></p> <p>25 <b>Exhibits that you indicated here. The first</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 225</p> <p>2 <b>one Exhibit 15 I would assume that in the</b></p> <p>3 <b>refinancing the cost that you incur in</b></p> <p>4 <b>refinancing can't be expensed in the first</b></p> <p>5 <b>year. They have to be over a period of time,</b></p> <p>6 <b>usually the length of the loan so that is what</b></p> <p>7 <b>I would assume the first Exhibit 15 indicates.</b></p> <p>8 <b>The second is an invoice looks</b></p> <p>9 <b>like they originally billed us \$32,588.00.</b></p> <p>10 <b>They have nonbillable \$3,811.00 and then they</b></p> <p>11 <b>also gave us a discount. They wrote down</b></p> <p>12 <b>another \$7,555.00, which left a balance of</b></p> <p>13 <b>\$23,022.00 and there is a note down below that</b></p> <p>14 <b>there is a reversal of prior year management</b></p> <p>15 <b>consultant accrual of \$1,000.00 that I would</b></p> <p>16 <b>presume was for some work that was done prior</b></p> <p>17 <b>to the year 2005 and 2004 in regard to the</b></p> <p>18 <b>refinancing. The Gray Stone Fannie May</b></p> <p>19 <b>settlement statement never seen that. It's a</b></p> <p>20 <b>settlement statement of the Logan refinancing.</b></p> <p>21 <b>That is all I can tell you about that.</b></p> <p>22 <b>Q But it refers to the \$22,000.00,</b></p> <p>23 <b>does it not?</b></p> <p>24 <b>A Where?</b></p> <p>25 <b>I don't find it. Somebody is</b>  <b>LEX REPORTING SERVICE</b>  <b>800-608-6085</b></p>	<p>1 Dawley 227</p> <p>2 <b>anticipated closing, all right. What's the</b></p> <p>3 <b>question?</b></p> <p>4 <b>Q How does it wind up being paid a</b></p> <p>5 <b>year later the actual consulting fee.</b></p> <p>6 <b>A 'Cause we didn't get billed until</b></p> <p>7 <b>June of 2005.</b></p> <p>8 <b>Q A year later?</b></p> <p>9 <b>A A year later.</b></p> <p>10 <b>Q Under Gagas and Gapp should an</b></p> <p>11 <b>auditor be owed thousands of dollars by the</b></p> <p>12 <b>accountant by the business that's auditing or</b></p> <p>13 <b>should it not be in that position?</b></p> <p>14 <b>MR. TRAUB: Objection to the</b></p> <p>15 <b>form.</b></p> <p>16 <b>MR. KELLY: Objection to the</b></p> <p>17 <b>form.</b></p> <p>18 <b>MR. TRAUB: That calls for a</b></p> <p>19 <b>legal conclusion.</b></p> <p>20 <b>MR. KELLY: Objection to</b></p> <p>21 <b>form and just for the record Gapp</b></p> <p>22 <b>is G-A-P-P.</b></p> <p>23 <b>MR. HAYWOODE: Calls for an</b></p> <p>24 <b>auditor's opinion.</b></p> <p>25 <b>MR. TRAUB: You're asking</b>  <b>LEX REPORTING SERVICE</b>  <b>800-608-6085</b></p>
<p>1 Dawley 226</p> <p>2 <b>going to have to point it out.</b></p> <p>3 <b>Q But the question is how does a</b></p> <p>4 <b>closing that's consulted in 2004 wind up being</b></p> <p>5 <b>addressed a year later in 2005?</b></p> <p>6 <b>MR. TRAUB: Objection to</b></p> <p>7 <b>form.</b></p> <p>8 <b>MR. KELLY: Objection to</b></p> <p>9 <b>form.</b></p> <p>10 <b>MR. TRAUB: Are you</b></p> <p>11 <b>withdrawing your statement about</b></p> <p>12 <b>the \$22,000.00 appearing in</b></p> <p>13 <b>Exhibit 17?</b></p> <p>14 <b>Q Well, I can't break it out of that</b></p> <p>15 <b>document.</b></p> <p>16 <b>MR. TRAUB: I didn't want to</b></p> <p>17 <b>leave a question unanswered.</b></p> <p>18 <b>Q How is a closing in 2004 being</b></p> <p>19 <b>paid a year later?</b></p> <p>20 <b>A How is what being paid, how is the</b></p> <p>21 <b>bill being paid you mean?</b></p> <p>22 <b>Q The consulting fee for the</b></p> <p>23 <b>closing.</b></p> <p>24 <b>A Let's see when it closed.</b></p> <p>25 <b>Statement says March of 2004</b>  <b>LEX REPORTING SERVICE</b>  <b>800-608-6085</b></p>	<p>1 Dawley 228</p> <p>2 <b>him if something under a rule</b></p> <p>3 <b>complies or not. That is a legal</b></p> <p>4 <b>opinion.</b></p> <p>5 <b>Q Let me go back to this document</b></p> <p>6 <b>Plaintiff's 17.</b></p> <p>7 <b>Who put that charge on this</b></p> <p>8 <b>financial statement?</b></p> <p>9 <b>MR. TRAUB: What charge?</b></p> <p>10 <b>MR. HAYWOODE: The</b></p> <p>11 <b>consulting charge.</b></p> <p>12 <b>MR. TRAUB: Can you show us</b></p> <p>13 <b>what consulting charge you're</b></p> <p>14 <b>referring to? I think that was</b></p> <p>15 <b>the earlier question.</b></p> <p>16 <b>A This is an invoice dated 6/9/2005</b></p> <p>17 <b>for \$22,000.00 for, let's see, special</b></p> <p>18 <b>consulting regarding refinancing transaction,</b></p> <p>19 <b>new mortgage, pay off of existing debt, budget</b></p> <p>20 <b>June 30th, surplus cash, limited partners</b></p> <p>21 <b>request, property tax arrear and other</b></p> <p>22 <b>matters. So it's not just a refinancing. It</b></p> <p>23 <b>doesn't appear to be. Looks like it's several</b></p> <p>24 <b>other items as well.</b></p> <p>25 <b>Q It's billed to a year later?</b>  <b>LEX REPORTING SERVICE</b>  <b>800-608-6085</b></p>

<p>1 Dawley 229</p> <p>2 <b>A Well, not necessarily.</b></p> <p>3 <b>It depends on when they did the</b></p> <p>4 <b>work on these other items. June 30th surplus</b></p> <p>5 <b>cash, you know, would that be a year ago or is</b></p> <p>6 <b>that the current year and they are doing</b></p> <p>7 <b>budgets that would be for a future year so I</b></p> <p>8 <b>don't know when they did that. There is</b></p> <p>9 <b>nothing to indicate when it took place so I</b></p> <p>10 <b>don't know.</b></p> <p>11 MR. HAYWOODE: Mark this</p> <p>12 please as Plaintiff's 18. It is</p> <p>13 Number 9 from February 3rd.</p> <p>14 (A document was marked as</p> <p>15 Plaintiff's Exhibit 18, for</p> <p>16 identification as of this</p> <p>17 date.)</p> <p>18 <b>Q</b> Now, Number 18 speaks to some sort</p> <p>19 of an overage, is that correct?</p> <p>20 <b>A That's correct.</b></p> <p>21 <b>Q</b> What is happening there if you</p> <p>22 know.</p> <p>23 MR. KELLY: Objection to</p> <p>24 form.</p> <p>25 <b>A What happened was that the amount</b></p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 231</p> <p>2 MR. KELLY: Objection to</p> <p>3 form.</p> <p>4 <b>A This is Church Home. It wouldn't</b></p> <p>5 <b>have went to DHCR.</b></p> <p>6 <b>Q</b> Would it have gone to HUD?</p> <p>7 <b>A Yes.</b></p> <p>8 <b>Q</b> Did it come to HUD's attention at</p> <p>9 any time this overpayment?</p> <p>10 <b>A Yes, it did.</b></p> <p>11 <b>Q</b> What if anything did they do?</p> <p>12 <b>A They wanted verification that it</b></p> <p>13 <b>was re-paid and cancelled checks, which were</b></p> <p>14 <b>provided.</b></p> <p>15 <b>Q</b> Now, say that the overpayment over</p> <p>16 the three year period would be \$35,000.00</p> <p>17 approximately and the calculations performed</p> <p>18 by Marks, Paneth &amp; Shron show what amount of</p> <p>19 overpayment on that document?</p> <p>20 <b>A Let's see 2004 looks like -- 2004</b></p> <p>21 <b>looks like it was 16,753 and 2005 11,169. So</b></p> <p>22 <b>what's that, 27,000?</b></p> <p>23 <b>Q</b> The amount of money paid I suppose</p> <p>24 to settle this overpayment was how much?</p> <p>25 <b>A Whatever the overage was. If this</b></p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 230</p> <p>2 <b>that was paid on the management fee each month</b></p> <p>3 <b>was incorrect.</b></p> <p>4 <b>Q</b> How was it incorrect, sir?</p> <p>5 <b>A It was more than it should have</b></p> <p>6 <b>been.</b></p> <p>7 <b>Q</b> How much more?</p> <p>8 <b>A I think totally it ended up -- I</b></p> <p>9 <b>have to remember. Forty grand, thirty-five</b></p> <p>10 <b>grand. It took over -- it was for several</b></p> <p>11 <b>years, like for two or three years.</b></p> <p>12 <b>Q</b> What were the years in question?</p> <p>13 <b>A I don't recall.</b></p> <p>14 <b>Q</b> Does the document show any</p> <p>15 indication?</p> <p>16 <b>A Looks like three, four, and five.</b></p> <p>17 <b>Q</b> Now, was this something that</p> <p>18 Marks, Paneth &amp; Shron picked up or was it</p> <p>19 something that DHCR picked up?</p> <p>20 <b>A Marks, Paneth &amp; Shron.</b></p> <p>21 <b>Q</b> You have an independent</p> <p>22 recollection of that?</p> <p>23 <b>A Yes.</b></p> <p>24 <b>Q</b> When they picked it up did it come</p> <p>25 to the attention of the DHCR?</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 232</p> <p>2 <b>was 27,000 or 28,000 that's what was paid</b></p> <p>3 <b>back.</b></p> <p>4 MR. KELLY: Let me also say</p> <p>5 for the record that looks like a</p> <p>6 photocopy of that cut off the</p> <p>7 last three inches.</p> <p>8 THE WITNESS: 03 the numbers</p> <p>9 appear to be cut off.</p> <p>10 MR. HAYWOODE: I withdraw my</p> <p>11 questions as to Plaintiff's 18.</p> <p>12 Now, recently we served a</p> <p>13 notice to produce inquiring into</p> <p>14 the payment allocations of the</p> <p>15 investments represented by Dalton</p> <p>16 and we inquired into the other</p> <p>17 investments owned by the Seavey's</p> <p>18 which are serviced by Dalton and</p> <p>19 in response to that discovery</p> <p>20 request we received this document</p> <p>21 which I am marking this as</p> <p>22 Plaintiff's Exhibit 19.</p> <p>23 (A statement pertaining to</p> <p>24 Church Home, Logan Plaza and</p> <p>25 Charles Hill was marked</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>



1	Dawley	233	1	Dawley	235
2	as Plaintiff's Exhibit 19,		2	MR. HAYWOODE: The order to	
3	for identification, as of		3	show cause.	
4	this date.)		4	Plaintiff's 20 is a more	
	MR. TRAUB: I am going to		5	fullsome sheet, which seems to	
7	object to your categorization of		6	reflect investments that were	
8	this document. This document was		7	cropped off from Plaintiff's	
9	not produced in response to your		8	Exhibit 19.	
10	request for other partnerships		9	MR. TRAUB: There are	
11	and housing projects managed by		10	different dates. I just want to	
12	Dalton. In fact I --		11	point out that 19 and 20 are two	
13	MR. HAYWOODE: Let me		12	different dates. One is	
14	correct that statement.		13	September 06 and one is October	
15	We at first requested that		14	of 06.	
16	the statement of all the		15	Q Well, is there a reason that with	
17	developments managed by Dalton by		16	the second submission only the three	
18	discovery and that was not		17	investments were provided, whereas in the	
19	provided. That was objected to.		18	first submission all of the investments	
20	MR. TRAUB: Exactly.		19	including Lakeview were provided, is there a	
21	MR. HAYWOODE: We then asked		20	reason that was?	
22	for a statement concerning the		21	MR. TRAUB: I am going to	
23	payroll allocation issue. We		22	object to the form and not allow	
24	then requested a statement of the		23	the witness to answer.	
25	investments that were represented		24	Q Is there a reason that it was	
	by Dalton again by way of the		25	altered in that manner before its production	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	
	Dawley	234	1	Dawley	236
2	discovery request and we received		2	to us?	
3	Plaintiff' 19, which shows Church		3	MR. TRAUB: I am going to	
4	Home, Logan Plaza and Charles		4	instruct the witness not to	
5	Hill. Fifth and 106th Street is		5	answer, calls for a legal	
6	not on that list.		6	conclusion.	
7	Q My question is was there a reason		7	MR. HAYWOODE: The reason	
8	that Fifth and 106th Street was cut out of the		8	why this was cropped off is a	
9	production?		9	legal conclusion?	
10	MR. KELLY: Objection to		10	MR. TRAUB: Absolutely, Mel.	
11	form.		11	This was done -- I don't	
12	MR. TRAUB: Objection to		12	know where you got this from.	
13	form.		13	You told just told me this came	
14	<b>A Fifth and 106th Street does not</b>		14	from your order to show cause so	
15	<b>get front-line allocation.</b>		15	this wasn't part of discovery	
16	MR. HAYWOODE: Now, in the		16	production. This being	
17	original pleading let's call this		17	Plaintiff's Exhibit 20.	
18	Plaintiffs 20.		18	Plaintiff's Exhibit 19,	
19	(The order to show cause was		19	which is September 2006, was	
20	marked as Plaintiff's		20	produced during discovery.	
21	Exhibit 20, for		21	Number one, there is nothing to	
22	identification, as of this		22	show that there was anything that	
23	date.)		23	was cut off, but number 2, as	
24	MR. TRAUB: When you say the		24	I've stated in my objections to	
25	original pleading?		25	your discovery and to your	
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	800-608-6085			800-608-6085	

<p>1 Dawley 237</p> <p>2 requests numerous times, only the</p> <p>3 four partnerships that are at</p> <p>4 issue in this litigation are</p> <p>5 relevant to this litigation and</p> <p>6 discovery. With respect to</p> <p>7 confidential and privileged</p> <p>8 information as to partnerships</p> <p>9 that your client is not a partner</p> <p>10 in is not relevant to this</p> <p>11 litigation.</p> <p>12 MR. KELLY: I object to</p> <p>13 form.</p> <p>14 Q Isn't it a fact that the first</p> <p>15 document ways given by you, Mr. Dawley, to</p> <p>16 Sandra Griffiths when they were in the process</p> <p>17 of going to Dalton to get these?</p> <p>18 MR. TRAUB: Before</p> <p>19 litigation was commenced?</p> <p>20 MR. HAYWOODE: Yes.</p> <p>21 A Yes.</p> <p>22 They wanted to know -- they didn't</p> <p>23 understand how front-line was done, so they</p> <p>24 picked a month or I picked a month I don't</p> <p>25 recall. We picked a month and I provided them</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 239</p> <p>2 <b>you, but I told them I wouldn't produce it.</b></p> <p>3 Q It never came to your attention</p> <p>4 that she said to them if you want that you're</p> <p>5 going to have to sue us?</p> <p>6 A No, but I told them I wouldn't</p> <p>7 give it to them.</p> <p>8 Q The plaintiffs are concerned with</p> <p>9 the large number of investments that Marks,</p> <p>10 Paneth &amp; Shron represent here on behalf of the</p> <p>11 Seavey's and I believe there is some private</p> <p>12 buildings that they represent and the</p> <p>13 plaintiff's concern is that the large amount</p> <p>14 of monies being paid to Marks, Paneth &amp; Shron</p> <p>15 and the fact that it provides personal</p> <p>16 services to individuals of the Seavey family</p> <p>17 might jaundice their judgment in performing</p> <p>18 the audits of these books. It was by reason</p> <p>19 of that, that we asked for discovery as to all</p> <p>20 of the buildings.</p> <p>21 Did anyone tell you at our second</p> <p>22 request not to give us copies of the full</p> <p>23 sheet, but only provide the three buildings?</p> <p>24 MR. TRAUB: Objection to</p> <p>25 form.</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 238</p> <p>2 with everything that's done in the month in</p> <p>3 order to produce the front-line allocation and</p> <p>4 I am sure that's where this form came from was</p> <p>5 from that production and they were welcome to</p> <p>6 look at those. That also gave them the</p> <p>7 information of what everybody's salary was.</p> <p>8 It gave them the information on who everybody</p> <p>9 was. It gave them the information on what</p> <p>10 people were allocated and how much was</p> <p>11 allocated from every person. They were also</p> <p>12 given the information on how much the payroll</p> <p>13 taxes were, medical expenses and other items</p> <p>14 that were included in these line items for the</p> <p>15 front line allocation determination.</p> <p>16 Q They requested personnel reports</p> <p>17 on each of the persons at the central office.</p> <p>18 Was that given to them?</p> <p>19 A No.</p> <p>20 Q Did you tell them that or did</p> <p>21 Phyllis Seavey tell them if you want that</p> <p>22 you're going to have to sue us?</p> <p>23 MR. TRAUB: Objection to the</p> <p>24 form.</p> <p>25 A I don't remember what she told</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 240</p> <p>2 I am not going to allow you</p> <p>3 to answer. That would ask for</p> <p>4 the invocation of the</p> <p>5 attorney/client work privilege.</p> <p>6 MR. KELLY: I am going to</p> <p>7 object too for several reasons,</p> <p>8 but since this is not going to be</p> <p>9 answered I won't go into details.</p> <p>10 Q Did any non-attorney tell you not</p> <p>11 to provide the full sheet the second time we</p> <p>12 requested, but to truncate it and to provide</p> <p>13 only the three investments?</p> <p>14 MR. TRAUB: Again objection</p> <p>15 to form.</p> <p>16 If they do so it would have</p> <p>17 been at the instructions of</p> <p>18 counsel.</p> <p>19 MR. HAYWOODE: I object to</p> <p>20 that bit of speculation.</p> <p>21 MR. TRAUB: That is nice,</p> <p>22 Mel, but I am not allowing him to</p> <p>23 answer.</p> <p>24 MR. KELLY: I am going to</p> <p>25 object as well, but since this is</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>

1	Dawley	241	1	Dawley	243
2	not going to be answered I am not		2	the software?	
3	going to go in detail on my		3	MR. HAYWOODE: Yes.	
4	objection.		4	MR. TRAUB: I am going to	
	<b>Q</b> Is it not a fact that Plaintiff's		5	object to the form. The document	
7	19 is a cropped and purposely abridged version		6	speaks for itself as does my	
8	of Plaintiff's 20?		7	objections that were given in	
9	MR. TRAUB: Again objection		8	response to your document	
10	to the form.		9	request.	
11	The documents speak for		10	MR. HAYWOODE: Are you	
12	themselves.		11	directing the witness not to	
13	MR. KELLY: I am objecting		12	answer?	
14	as well.		13	MR. TRAUB: I direct the	
15	MR. TRAUB: We are already		14	witness not to answer on the	
16	went over, as I pointed out at		15	grounds of attorney/client work	
17	the beginning, they are		16	product.	
18	completely two different months.		17	MR. HAYWOODE: Assuming that	
19	As I pointed out in my earlier		18	an attorney told him to do it.	
20	statement, Plaintiff's 19 is		19	MR. TRAUB: Including	
21	September of 06 and Plaintiff's		20	someone at the direction of an	
22	20 is October of 06. They are		21	attorney told him to do it. In	
23	different documents.		22	fact, knowing that someone at the	
24	<b>Q</b> Would the statement of October		23	direction of an attorney told him	
25	20th of 06, have listed the other building		24	to do that.	
	along with those three?		25	MR. HAYWOODE: I think you	
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	800-608-6085			800-608-6085	
1	Dawley	242	1	Dawley	244
2	MR. TRAUB: Objection to the		2	argued yourself into that box.	
3	form.		3	MR. TRAUB: It is not a box.	
4	<b>A</b> October 20th of 06 shows all the		4	I stand by my objection.	
5	buildings. September of 06 only shows the		5	MR. EDMONDS: Can I put two	
6	three buildings and the allocation of		6	or three questions to him?	
7	front-line to each one.		7	MR. TRAUB: I do recognize	
8	MR. TRAUB: Are you asking		8	you're a member of the Bar. In	
9	for the software this is printed		9	this matter you're not a counsel	
10	from.		10	of record. If you have three	
11	<b>Q</b> In September of 2006 would this		11	questions I ask that your counsel	
12	document have shown the other building in		12	be given that, but I am not going	
13	question?		13	to allow a non-counsel of record	
14	MR. TRAUB: Objection to		14	to --	
15	form.		15	MR. EDMONDS: Plaintiff does	
16	This was printed from a		16	not have the right to inquire of	
17	software and so are you asking if		17	a witness?	
18	the software has more		18	MR. TRAUB: Unless you can	
19	information?		19	show me why you would, I am not	
20	MR. HAYWOODE: I am asking		20	going to allow it, but if you	
21	if there is any way if they		21	have questions I ask you to write	
22	truncated or cut off the rest of		22	them down and give them to your	
23	this document.		23	counsel.	
24	MR. TRAUB: In other words,		24	MR. EDMONDS: I desire to.	
25	did they only print a portion of		25	MR. HAYWOODE: Why don't we	
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1	Dawley	245	1	Dawley	247
2	let him ask it and then you can		2	seems silly, but that's fine.	
3	object to it.		3	MR. KELLY: I object.	
4	MR. TRAUB: I don't get why		4	MR. EDMONDS: What is the	
5	you can't just ask it if they are		5	total dollars in the	
6	written down. I would be more		6	non-distributable reserve account	
7	comfortable.		7	of Fifth and 106th Street	
8	MR. EDMONDS: They are not		8	Associates?	
9	written down. The introduction		9	Q What is the total dollars in the	
10	is. It is only because I want to		10	non-distributable reserve account of Fifth and	
11	introduce these questions in this		11	106th Street Associates?	
12	fashion, but it would seem to me		12	MR. TRAUB: Objection to	
13	that as a plaintiff I have a		13	form.	
14	right to examine this witness.		14	THE WITNESS: As of when?	
15	MR. TRAUB: You just did for		15	MR. EDMONDS: As of now.	
16	the last seven, eight hours		16	Q As of now.	
17	through your attorney.		17	A Now, as of now today in all	
18	MR. HAYWOODE: Well, now he		18	reserve accounts nonrestricted there is	
19	did this before. Let's let him		19	probably around 800,000.00.	
20	put the questions and you object		20	MR. EDMONDS: Does your	
21	to that.		21	record reflect, the amount that	
22	MR. TRAUB: I recognize he		22	was delivered as a reserve	
23	did it before, but not with my		23	account to Dalton Management as	
24	client. It was Mr. Jennings and		24	of the time that they assumed	
25	his counsel allowed it.		25	management for each of the	
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	800-608-6085			800-608-6085	
1	Dawley	246	1	Dawley	248
2	MR. EDMONDS: You're going		2	projects?	
3	to direct the witness not to		3	Q Does your record reflect, the	
4	answer the question?		4	amount that was delivered as a reserve account	
5	MR. TRAUB: I am not		5	to Dalton Management as of the time that they	
6	actually going to allow you to		6	assumed management for each of the projects?	
7	ask them.		7	MR. TRAUB: This is a little	
8	MR. EDMONDS: You're not		8	confusing.	
9	going to ask prevent me from		9	I ask that we take a break	
10	asking him?		10	and your client can tell you the	
11	MR. HAYWOODE: I am going to		11	questions he has. We are near	
12	ask Mr. Edmonds to say to me what		12	the end. It's 5:00.	
13	his questions are, let him say it		13	MR. EDMONDS: This isn't	
14	out loud so we get it right.		14	working.	
15	MR. TRAUB: My other issue		15	A Do you have to ask it again what	
16	is tag-teaming of getting a		16	are we doing?	
17	deposition. You're entitled to		17	Every reserve account that was	
18	one interrogatory. As the		18	turned over to us by the prior management	
19	counsel of record you have been		19	company was put into accounts required by DHCR	
20	doing it since 10:30 this		20	so some of the reserve accounts are not under	
21	morning, so I don't see the need		21	our control. They are controlled by DHCR.	
22	to all of a sudden to allow the		22	You have to request the money from them. You	
23	plaintiff to ask questions, but		23	have to have proof of your expenditure; for	
24	if you want to ask the questions		24	example, real estate taxes and provide that	
25	and then you can repeat them it		25	support to DHCR. They review it. They	
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<p>1 Dawley 249</p> <p>2 <b>approve it. They countersign the check, which</b></p> <p>3 <b>has to be signed by one of the general</b></p> <p>4 <b>partners, so it takes two signatures and then</b></p> <p>5 <b>they -- that money flows into operating and</b></p> <p>6 <b>from operating sometimes it goes to the taxes,</b></p> <p>7 <b>sometimes it goes to -- direct to depending</b></p> <p>8 <b>upon which reserve account it comes out.</b></p> <p>9 <b>Q</b> What is the total amount of</p> <p>10 reserves that were in DHCR and held by the</p> <p>11 corporation when Dalton took over</p> <p>12 approximately?</p> <p>13 MR. TRAUB: Objection.</p> <p>14 It's a compound question.</p> <p>15 <b>A I couldn't begin to tell you.</b></p> <p>16 <b>That is way too long ago. That was in 2000</b></p> <p>17 <b>and I don't recall.</b></p> <p>18 MR. HAYWOODE: I will call</p> <p>19 for the production of that</p> <p>20 information.</p> <p>21 MR. EDMONDS: One further</p> <p>22 question.</p> <p>23 Are the reserve accounts</p> <p>24 under Dalton's control invested</p> <p>25 and reinvested?</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 251</p> <p>2 the role of an auditor?</p> <p>3 MR. KELLY: Objection to</p> <p>4 form.</p> <p>5 Asked and answered.</p> <p>6 MR. TRAUB: Objection to</p> <p>7 form.</p> <p>8 MR. KELLY: Objection for</p> <p>9 form?</p> <p>10 THE WITNESS: Can I answer</p> <p>11 it?</p> <p>12 MR. TRAUB: No.</p> <p>13 <b>Q</b> Do you consider Marks, Paneth and</p> <p>14 Shron to be the auditors?</p> <p>15 MR. TRAUB: You mean Mr.</p> <p>16 Dawley?</p> <p>17 <b>Q</b> I am sorry, to be the accountant</p> <p>18 with regard to these matters?</p> <p>19 MR. TRAUB: Objection to</p> <p>20 form and asked and answered.</p> <p>21 MR. KELLY: Objection to</p> <p>22 form.</p> <p>23 <b>A You said that I assume that they</b></p> <p>24 <b>are the accountant or the auditors?</b></p> <p>25 <b>Q</b> Do you consider that their role is</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 250</p> <p>2 <b>Q</b> Are the reserve accounts that</p> <p>3 Dalton controls as opposed to DHCR invested</p> <p>4 and reinvested by Dalton or --</p> <p>5 <b>A Well, we have --</b></p> <p>6 MR. TRAUB: Objection to the</p> <p>7 form.</p> <p>8 <b>A We have one account with Chase,</b></p> <p>9 <b>which is invested and Farm Credit notes and</b></p> <p>10 <b>money markets and the other account an excess</b></p> <p>11 <b>income account that's invested in money</b></p> <p>12 <b>markets. No, excuse me -- yeah, it's money.</b></p> <p>13 <b>Markets. The other accounts are held and</b></p> <p>14 <b>controlled by DHCR and invested by them.</b></p> <p>15 MR. EDMONDS: On behalf of</p> <p>16 the partnership, is that correct?</p> <p>17 THE WITNESS: That's</p> <p>18 correct.</p> <p>19 MR. EDMONDS: No further</p> <p>20 questions.</p> <p>21 <b>Q</b> Is it fair to say that from your</p> <p>22 testimony and from the use of the adjusted</p> <p>23 journal entries, is it fair to say that the</p> <p>24 role of Marks, Paneth &amp; Shron in this matter</p> <p>25 is more the role of the accountant than it is</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 252</p> <p>2 such that you consider them to be the</p> <p>3 accountant rather than the auditors?</p> <p>4 <b>A No.</b></p> <p>5 MR. HAYWOODE: I ask that</p> <p>6 you mark this document as</p> <p>7 Plaintiff's Exhibit 21.</p> <p>8 (A letter dated November 25,</p> <p>9 2008 was marked as</p> <p>10 Plaintiff's Exhibit 21, for</p> <p>11 identification, as of this</p> <p>12 date.)</p> <p>13 <b>Q</b> It's a letter dated November 25,</p> <p>14 2008.</p> <p>15 Did you write that letter?</p> <p>16 <b>A Yes.</b></p> <p>17 <b>Q</b> Would you read the letter, who is</p> <p>18 the letter sent to?</p> <p>19 <b>A John Edmonds with reference to</b></p> <p>20 <b>Logan Plaza. It's dated November the 21, 2008</b></p> <p>21 <b>and it refers to his letter dated November the</b></p> <p>22 <b>17, 2008 and it reads, in that your statements</b></p> <p>23 <b>and numbers appear to have no relationship to</b></p> <p>24 <b>the books and records of Logan Plaza as I know</b></p> <p>25 <b>them, I am referring your letter of Logan to</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>



<p>1 Dawley 253</p> <p>2 the accounting firm of Marks, Paneth &amp; Shron</p> <p>3 LLP, i.e. Bill Jennings and request that we</p> <p>4 have your accountant contact them for</p> <p>5 explanation.</p> <p>6 Q You wrote that letter?</p> <p>7 A Yes.</p> <p>8 Q You signed that letter?</p> <p>9 A Yes.</p> <p>10 Q You said in that letter that</p> <p>11 Marks, Paneth &amp; Shron is the accountant?</p> <p>12 MR. TRAUB: Objection.</p> <p>13 MR. KELLY: Objection to the</p> <p>14 form.</p> <p>15 MR. TRAUB: Objection to</p> <p>16 form.</p> <p>17 Misstates the letter.</p> <p>18 A It says --</p> <p>19 Q You said in that letter --</p> <p>20 A Accounting.</p> <p>21 Q Marks, Paneth and Shron was the</p> <p>22 accounting firm for the corporation, is that</p> <p>23 correct, you said that?</p> <p>24 A Yes.</p> <p>25 MR. HAYWOODE: No further</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 255</p> <p>2 line, so that the audit shows that. So that</p> <p>3 my beginning balance on the next year, which</p> <p>4 is January 1st, will reflect only the balance</p> <p>5 sheet items that I need to start with.</p> <p>6 Q The original entries remain on the</p> <p>7 general ledger, correct?</p> <p>8 A Yes, everything stays there.</p> <p>9 Q So anyone reviewing that general</p> <p>10 ledger, would be able to see exactly what</p> <p>11 money was paid to what vendor at any</p> <p>12 particular time?</p> <p>13 A Yes.</p> <p>14 MR. TRAUB: Objection to</p> <p>15 form.</p> <p>16 A Yes.</p> <p>17 Q When you make that adjusting</p> <p>18 journal entry that one time, is that a</p> <p>19 separate entry on the general ledger such that</p> <p>20 someone reviewing it for that period would see</p> <p>21 that entry?</p> <p>22 A Yes, I have complete back up.</p> <p>23 Everything is coded, labeled and there is a</p> <p>24 sheet at the very end that prints out what was</p> <p>25 actually posted in the BJ Murray software</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 254</p> <p>2 questions.</p> <p>3 EXAMINATION BY</p> <p>4 MR. KELLY:</p> <p>5 Q Good afternoon Mr. Dawley. There</p> <p>6 was lots of questions about adjusting journal</p> <p>7 entires. I'd just like to ask you a few more.</p> <p>8 What is your understanding of an</p> <p>9 adjusting journal entry?</p> <p>10 MR. HAYWOODE: Objection.</p> <p>11 Calls for a legal opinion.</p> <p>12 A It's an entry that makes a journal</p> <p>13 entry to the books and records to change the</p> <p>14 balance.</p> <p>15 Q When you get a suggestion for an</p> <p>16 adjusted journal entry from the auditor, do</p> <p>17 you go back and change the entry in the books</p> <p>18 of the general ledger for that transaction?</p> <p>19 A No.</p> <p>20 Q What do you do instead?</p> <p>21 A I take the balance sheet items,</p> <p>22 which is assets, liabilities and equity. I</p> <p>23 take the final audited balance sheet items,</p> <p>24 assets, liabilities and equity. I make one</p> <p>25 journal entry to bring those balances into</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 256</p> <p>2 program.</p> <p>3 Q So when you get the suggested</p> <p>4 journal entries from the auditor in this case,</p> <p>5 Marks, Paneth &amp; Shron, are you the individual</p> <p>6 that makes the entry on to the general ledger?</p> <p>7 A Yes.</p> <p>8 Q So you physically have the papers</p> <p>9 in review in front of you and review each</p> <p>10 entry as you make it?</p> <p>11 A Right.</p> <p>12 Q So if you see an entry that you</p> <p>13 disagree with, or you're don't understand or</p> <p>14 it's just plain wrong, you will question it</p> <p>15 with Marks, Paneth &amp; Shron or whoever you feel</p> <p>16 needs to be questioned, is that correct?</p> <p>17 A Yes.</p> <p>18 Q Now, I'd like to talk about the</p> <p>19 bookkeeping that's done at Dalton Management.</p> <p>20 Who receives the invoice for</p> <p>21 expenses on behalf of Dalton Management?</p> <p>22 A The invoices come in. They go to</p> <p>23 your accounts payable clerk. She sorts them</p> <p>24 by building. The managers from the building</p> <p>25 come in each week. They review those</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>

1 Dawley 257

2 **invoices. They approve the ones that they**

3 **feel are correct. They are then entered into**

4 **the books as a payable and then at a later**

5 **date with funds available they are paid.**

6 **Q** Who enters them into the books as

7 a payable?

8 **A** **Veronica Mackenzie.**

9 **Q** She is not associated with Marks,

10 Paneth whatsoever?

11 **A** **No, she is not.**

12 **Q** Who prepares the checks to pay

13 these invoices after they have been approved?

14 **A** **The payroll clerk. The payable**

15 **clerk, Veronica Mackenzie.**

16 **Q** Does Marks, Paneth & Shron have

17 any input as to whether invoices are approved

18 or paid?

19 **A** **No.**

20 **Q** Tell me about how revenue is

21 received by Dalton Management on behalf of the

22 building?

23 **A** **Revenues come in two ways. We**

24 **send out rent bills. Some tenants return a**

25 **check along with their bill. It goes directly**

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1 Dawley 258

2 **to the bank and a lock box. Alonzo Rodgers on**

3 **a daily basis logs in, brings up the**

4 **information and posts it, which automatically**

5 **posts to the individual's account, because**

6 **it's already coded and then sometimes the**

7 **tenants don't include a payment voucher so**

8 **that it can't be coded by the bank. So it**

9 **comes back to us in an overnight packet where**

10 **he then goes through those checks, put them in**

11 **and scans them in and then posts them.**

12 **Q** Who sends out the rent bills?

13 **A** **Dalton Management.**

14 **Q** Does Marks, Paneth & Shron have

15 any role in sending out the rent bills?

16 **A** **No.**

17 **Q** You mentioned Alonzo Rodgers

18 involved in this process?

19 **A** **Yes.**

20 **Q** Is he involved with Marks, Paneth

21 whatsoever?

22 **A** **No.**

23 **Q** Is any of the employees you

24 mentioned earlier in your testimony, the six

25 or so affiliated with Marks, Paneth & Shron

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1 Dawley 259

2 whatsoever?

3 **MR. TRAUB:** Objection to

4 form.

5 **A** **No.**

6 **Q** Who receives the bank statements

7 on behalf of Dalton Management and the

8 building it manages?

9 **A** **I do.**

10 **I open them, 'cause they come in**

11 **sealed and do the bank reconciliationis and**

12 **then they are filed.**

13 **Q** Who decided the accounting

14 procedures used at Dalton management?

15 **A** **I mostly did.**

16 **Q** Now, I am going to switch topics

17 and ask you about the work that Marks, Paneth

18 & Shron was involved in.

19 You had testified earlier that

20 Marks, Paneth & Shron provides audit services

21 to various of the buildings managed by Dalton

22 Management, is that correct?

23 **A** **Yes.**

24 **Q** Do you recall what other services,

25 other than audit services, Marks, Paneth &

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1 Dawley 260

2 Shron provided to any of these entities?

3 **A** **They do the tax returns,**

4 **partnership tax return. They do the -- well,**

5 **they help us with the rent increases. They**

6 **help us with the RPIE, which is an annual**

7 **requirement. They help us with the**

8 **certiaries, which is required to do in order**

9 **to keep the real estate taxes down and I know**

10 **that they look at some of the tax consequences**

11 **of doing certain things, i.e. the \$180,000.**

12 **Q** With respect to the tax returns,

13 do you know if any of the entities had ever

14 been audited by any taxing authority?

15 **A** **Yes.**

16 **Q** What do you recall about that?

17 **A** **Umm, I believe Lakeview was**

18 **audited and that wasn't too long ago. Before**

19 **that I don't think we had any audits.**

20 **Q** Do you know what tax periods were

21 audited in connection with Lakeview?

22 **A** **I don't recall.**

23 **Q** Do you know what the finding of

24 the audit was in connection with Lakeview?

25 **A** **No change.**

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<p>1 Dawley 261</p> <p>2 Q So what do you understand no</p> <p>3 change to mean?</p> <p>4 A No change is that there was no</p> <p>5 changes to the tax return.</p> <p>6 MR. HAYWOODE: Objection to</p> <p>7 what he understands it to mean.</p> <p>8 MR. TRAUB: You can answer.</p> <p>9 A When you get a no change from the</p> <p>10 internal revenue that means that the tax</p> <p>11 return that you filed will not be changed, so</p> <p>12 there will be no additional income or expense</p> <p>13 to the K-1 or changes to the K-1's.</p> <p>14 Q Is it fair to say that the IRS</p> <p>15 examined the tax returns and concluded that</p> <p>16 there was nothing incorrect to change?</p> <p>17 MR. HAYWOODE: Objection.</p> <p>18 There is no indication that</p> <p>19 the IRS examined every facet of</p> <p>20 the return they may have sampled</p> <p>21 like the auditors do.</p> <p>22 MR. TRAUB: Mr. Haywoode,</p> <p>23 you yourself know that for the</p> <p>24 last several years that Federal</p> <p>25 rules allow for objections, but</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 263</p> <p>2 inspect the books and records?</p> <p>3 A I am guessing maybe forty times.</p> <p>4 Q In any of those forty times, did</p> <p>5 you refuse to provide them access to documents</p> <p>6 other than what you testified about the</p> <p>7 personal records?</p> <p>8 A No.</p> <p>9 Q In any of those forty times did</p> <p>10 they ask to look at documents and were you</p> <p>11 unable to locate such documents?</p> <p>12 A Yes.</p> <p>13 Q Do you recall the specific</p> <p>14 instance?</p> <p>15 A The mortgages.</p> <p>16 Q Do you recall any other specific</p> <p>17 instances?</p> <p>18 A No, just the mortgages was the big</p> <p>19 item.</p> <p>20 Q In talking about your experience</p> <p>21 at your prior positions you worked at Hudson</p> <p>22 River Management.</p> <p>23 A That's correct.</p> <p>24 Q What is your position there?</p> <p>25 A I was the controller and also the</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 262</p> <p>2 there is no speaking objections.</p> <p>3 MR. HAYWOODE: But you</p> <p>4 didn't listen to me.</p> <p>5 MR. TRAUB: I listened to</p> <p>6 you.</p> <p>7 MR. HAYWOODE: So I returned</p> <p>8 the favor.</p> <p>9 I am shorter than your</p> <p>10 objections. It's an objection to</p> <p>11 form.</p> <p>12 MR. TRAUB: Thank you.</p> <p>13 A They didn't find anything. I</p> <p>14 don't remember exactly what you asked, I am</p> <p>15 sorry.</p> <p>16 Q I asked is it fair to say that the</p> <p>17 after the IRS reviewed the returns, they found</p> <p>18 that there was no mistakes or other things</p> <p>19 that needed to be corrected?</p> <p>20 A There was nothing there to find so</p> <p>21 they didn't find anything.</p> <p>22 Q With regard to the increase paid</p> <p>23 my Cameron Pryce &amp; Griffiths, with regard to</p> <p>24 the increase how many times would you say they</p> <p>25 came to the offices of Dalton Management to</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 264</p> <p>2 chief operating officer.</p> <p>3 Q What duties did you have at that</p> <p>4 position?</p> <p>5 A The same as I did here only more</p> <p>6 so, because there was only two of us taking</p> <p>7 care of 2,000 tenants.</p> <p>8 Q Prior to that you indicated you</p> <p>9 worked at an asbestos removal company?</p> <p>10 A Yes.</p> <p>11 Q What were your duties there?</p> <p>12 A Controller.</p> <p>13 Q What did being controller entail</p> <p>14 at that company?</p> <p>15 A Trying to get them out of a mess.</p> <p>16 They were over extended. Basically what I</p> <p>17 have done prior to, for like fifteen years,</p> <p>18 was work out for real estate companies?</p> <p>19 Q Would it be fair to say for the</p> <p>20 last twenty-five years or so you've been a</p> <p>21 controller or chief operating officer for</p> <p>22 various entities?</p> <p>23 A Yes.</p> <p>24 MR. KELLY: I have no</p> <p>25 further questions.</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>

<p>1 Dawley 265</p> <p>2 FURTHER EXAMINATION BY</p> <p>3 MR. HAYWOODE:</p> <p>4 Q Is it fair to say that Dalton</p> <p>5 management, earns about \$500,000.00 a year as</p> <p>6 manager of the buildings that it functions in</p> <p>7 for the Seavey's?</p> <p>8 MR. TRAUB: Objection to</p> <p>9 form.</p> <p>10 You mean the four buildings</p> <p>11 at issue here?</p> <p>12 Q I am sorry, for the four buildings</p> <p>13 here in excess of \$510,000.00?</p> <p>14 A Let's see, that is pretty close,</p> <p>15 about 55.</p> <p>16 Q In terms of your maintenance of</p> <p>17 accounting records and what not, is it fair to</p> <p>18 say that most of the requests were made of</p> <p>19 you, indicating Dalton, were referred to</p> <p>20 Marks, Paneth &amp; Shron for an answer?</p> <p>21 MR. TRAUB: Objection to</p> <p>22 form.</p> <p>23 Q Is that fair to say?</p> <p>24 MR. KELLY: Objection to</p> <p>25 form.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 267</p> <p>2 &amp; Shron for the building that they control</p> <p>3 that they relate to would that sound to you be</p> <p>4 a statement of truth or would it sound to be a</p> <p>5 statement of exaggeration?</p> <p>6 MR. TRAUB: Objection to</p> <p>7 form.</p> <p>8 MR. KELLY: Objection to</p> <p>9 form.</p> <p>10 A I don't know what other companies</p> <p>11 do with Bill Jennings. I know that I am doing</p> <p>12 exactly the same thing for Dalton that I did</p> <p>13 for River Rental in their 2000 units. I kept</p> <p>14 books on a cash basis and they put them on an</p> <p>15 accrual basis at the end of the year and</p> <p>16 produced a financial statement. They did the</p> <p>17 tax returns. That's -- you know, that's been</p> <p>18 the procedure.</p> <p>19 Q Is it not a fact that the</p> <p>20 accounting cover that's provided to Dalton by</p> <p>21 Mark Paneth and Shron, enabling it and</p> <p>22 abetting it, makes it possible for Dalton to</p> <p>23 take in \$500,000.00 a year when the total</p> <p>24 accounting obligation is being placed on</p> <p>25 Marks, Paneth &amp; Shron?</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 266</p> <p>2 Q Most of the requests for</p> <p>3 documentation was forwarded to Marks, Paneth &amp;</p> <p>4 Shron?</p> <p>5 A They spent days in our office</p> <p>6 requesting information. One of the very items</p> <p>7 that you have as an Exhibit, which was the</p> <p>8 front-line expenditure information was given</p> <p>9 freely. We provided everything that we had</p> <p>10 there whenever they asked for it.</p> <p>11 Some things I couldn't find,</p> <p>12 because I didn't have the mortgage. I didn't</p> <p>13 have -- there were closing binders. I didn't</p> <p>14 have access to them.</p> <p>15 Q What percentage of these requests</p> <p>16 were referred to Marks, Paneth &amp; Shron?</p> <p>17 MR. TRAUB: Objection to</p> <p>18 form.</p> <p>19 A I don't have a clue what</p> <p>20 percentage. Out of all the information that</p> <p>21 they asked for very small.</p> <p>22 Q If I said to you that Mr. William</p> <p>23 Jennings had testified that it is the habit of</p> <p>24 not only Dalton, but all management companies</p> <p>25 to refer all those questions to Marks, Paneth</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 268</p> <p>2 MR. TRAUB: Objection to</p> <p>3 form.</p> <p>4 Isn't it a fact.</p> <p>5 That question is so</p> <p>6 convoluted I am not going to</p> <p>7 allow you to answer it.</p> <p>8 MR. KELLY: I am going to</p> <p>9 object to the form as well.</p> <p>10 Q Aren't they making it possible for</p> <p>11 Dalton to collect \$500,000.00, by virtue of</p> <p>12 their total covering of every conceivable</p> <p>13 angle of the tax and accounting</p> <p>14 responsibilities that Dalton has?</p> <p>15 MR. TRAUB: Same objection.</p> <p>16 Question is so convoluted</p> <p>17 and compound I am not going to</p> <p>18 allow you to answer.</p> <p>19 MR. HAYWOODE: Obviously,</p> <p>20 counsel.</p> <p>21 Q Do you understand the question,</p> <p>22 sir?</p> <p>23 MR. TRAUB: It's got twenty</p> <p>24 something angles.</p> <p>25 MR. HAYWOODE: Here we go</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

1 Dawley 269

2 with speeches to the record.

3 Q Do you understand the question?

4 A I was told by counsel not to

5 answer.

6 MR. TRAUB: If you want to

7 break your question down to

8 individual pieces.

9 MR. HAYWOODE: No further

10 questions.

11 FURTHER EXAMINATION BY

12 MR. KELLY:

13 Q In any of the inquiries you've

14 had of Marks, Paneth & Shron, have you ever

15 found them to be unresponsive to your

16 inquiries?

17 A No.

18 Q Have you ever had any problem with

19 what Marks, Paneth & Shron has done with any

20 of these entities?

21 A No.

22 Q Have you had any reason to doubt

23 that Marks, Paneth & Shron has been

24 forthcoming, with all the information that was

25 ever asked of them in connection with the

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1 Dawley 270

2 Dalton management entities?

3 A No.

4 MR. KELLY: Thank you.

5 No further questions.

6 FURTHER EXAMINATION BY

7 MR. HAYWOODE:

8 Q Has anyone at Marks, Paneth &

9 Shron ever described Dalton's operation as

10 being deficient and suggested that the

11 Dalton's operation is a lazy one? Has anyone

12 ever suggested that?

13 MR. TRAUB: Again objection

14 to form.

15 Again it's compound.

16 Q I will break that one down.

17 Did anyone ever say that Dalton's

18 performance, in terms of the accounting

19 operation, is deficient to you?

20 A No.

21 Q Did they ever say that the Dalton

22 management's performance is a lazy one, that

23 they refer to questions to us because they

24 don't want to answer them themselves; anyone

25 ever say that to you?

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1 Dawley 271

2 A No.

3 MR. HAYWOODE: That is it.

4 MR. TRAUB: Thank you.

5 -o-o-

6 (Whereupon, the deposition

7 of Ronald Dawley was concluded at

8 5:30 p.m.)

9

10 RONALD DAWLEY

11

12 Subscribed and sworn to

13 before me this \_\_\_\_ day

14 of \_\_\_\_\_, 2009

15

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2

3 CERTIFICATE

4

5 I, ANGELA TORREGROSSA, a shorthand

6 reporter and Notary Public within and

7 for the State of New York, do hereby

8 certify:

9 That the witness(es) whose

10 testimony is hereinbefore set forth

11 was duly sworn by me, and the foregoing

12 transcript is a true record of the

13 testimony given by such witness(es).

14 I further certify that I am not

15 related to any of the parties to this

16 action by blood or marriage, and that I

17 am in no way interested in the outcome

18 of this matter.

19

20

21 ANGELA TORREGROSSA

22

23

24

25 LEX REPORTING SERVICE  
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1

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2 ERRATA SHEET

3

4 The following are my corrections to the

5 attached transcript:

6

7 PAGE LINE SHOULD READ

8 --- \* ---

9 --- \* ---

10 --- \* ---

11 --- \* ---

12 --- \* ---

13 --- \* ---

14 --- \* ---

15 --- \* ---

16 --- \* ---

17 --- \* ---

18 --- \* ---

19 --- \* ---

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